



MASSIVE MINERALS

Trespass

Presentation Overview

- Trespass from Drilling Operations
- Trespass from Fracking
- Geophysical Trespass
- Other Legal Theories regarding Interference with Oil & Gas

Trespass

- A cause of action that protects against unlawful interference with one's person or property.
- Oil and gas trespasses often arise in the context of disputes regarding title to the property on which the trespass occurred.
- Remember:
 1. The rule of capture protects oil and gas developers from liability of draining a neighbor's land.
 2. Ownership tends to be fractionalized.
 3. For oil and gas interests, trespass can be willful or inadvertent.

Trespass Resulting From Drilling Operations

- Surface Trespass
- Drilling Resulting in a Dry Hole
- Drilling Resulting in Production
- Slant-Hole Drilling

Surface Trespass

- Oil companies engage in operations prior to actual drilling such as building roads, clearing sites, constructing facilities, etc.
- Trespass occurs when the company does not have good surface title.
- Surface estate would be entitled to damages.
- Owner of the severed mineral estate would not likely have a cause of action because the damage is only to the surface and not to the minerals.

Drilling Resulting in a Dry Hole

- A trespasser who drills a dry hole is liable to the owner of the mineral estate.
 - Raises a question to the damages owed to the mineral owner
- Rule: When drilling results in a dry hole, the measure of damages is the loss of speculative value.
 - Bonus value of the lease before the dry hole was drilled
 - Plaintiff does not need to show any actual offers to lease the land

Humble Oil & Refining Co. v. Kishi **276 S.W. 190 (Tex. Comm'n App. 1925).**

- Issue: Whether Humble's lease on Kishi's land had expired before drilling began.
- Court determined that the lease did expire before drilling began.
- Court awarded the mineral owner:
 - Damages measured by bonus value of the lease before the dry hole
 - Good faith nature of the trespass did not reduce the damages
 - Amount of bonus reflects the speculative value of the minerals and the trespass destroyed this property interest.

Drilling Resulting in Production

- Mineral owner will have causes of action in trespass and conversion against a trespasser who achieved commercial production.
- Conversion: the unauthorized and wrongful assumption of dominion and control over the property of another.
- Example: Oil Company does not have a valid lease, or the lease has expired, and they proceed to drill on the true mineral owner's land.

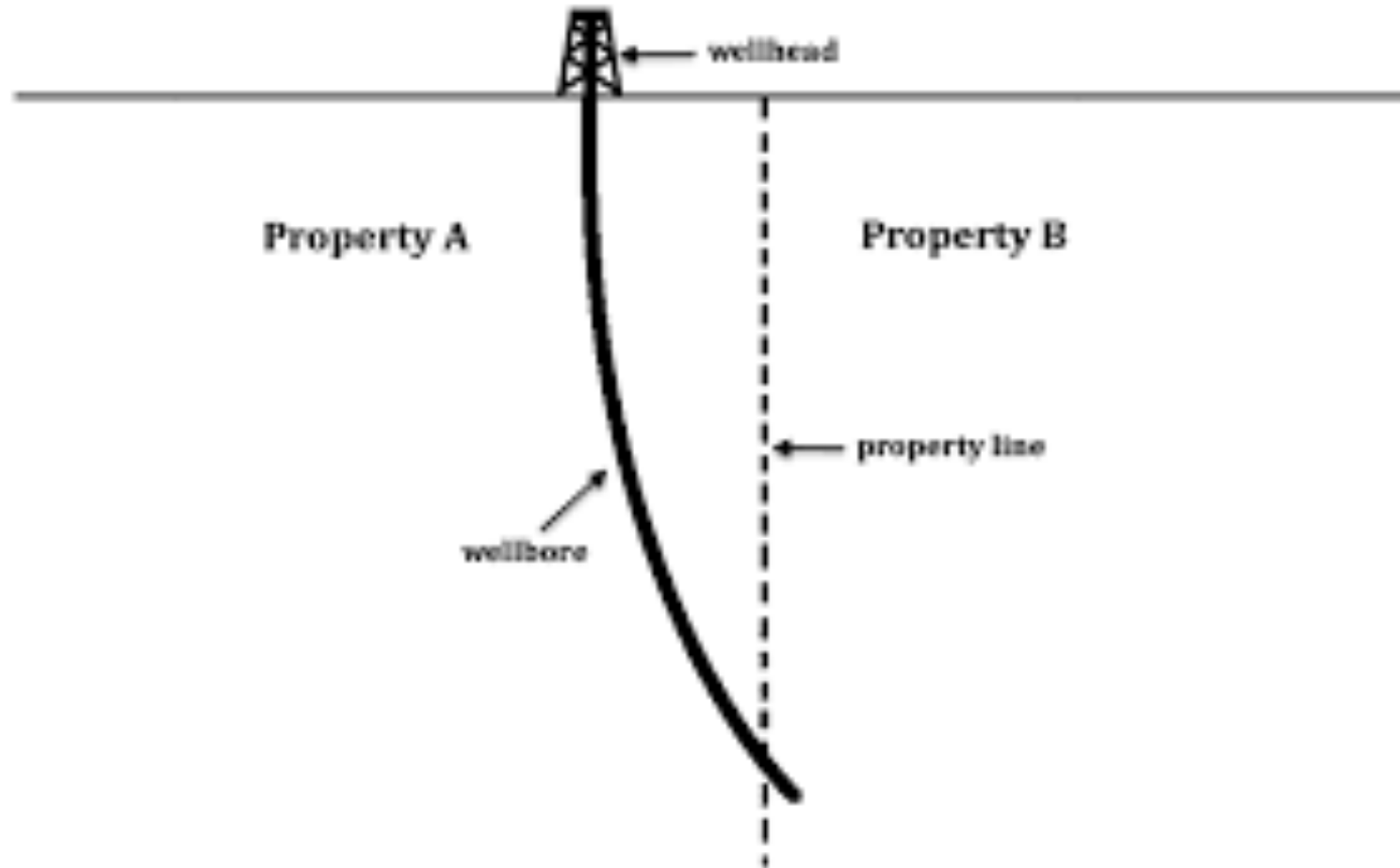
Drilling Resulting in Production – Damages

- Law distinguishes good faith and bad faith trespasses.
- Good faith → Equity will permit the trespasser to offset the cost of drilling and operating the well
- Bad Faith → No offset allowed

Drilling Resulting in Production – Damages

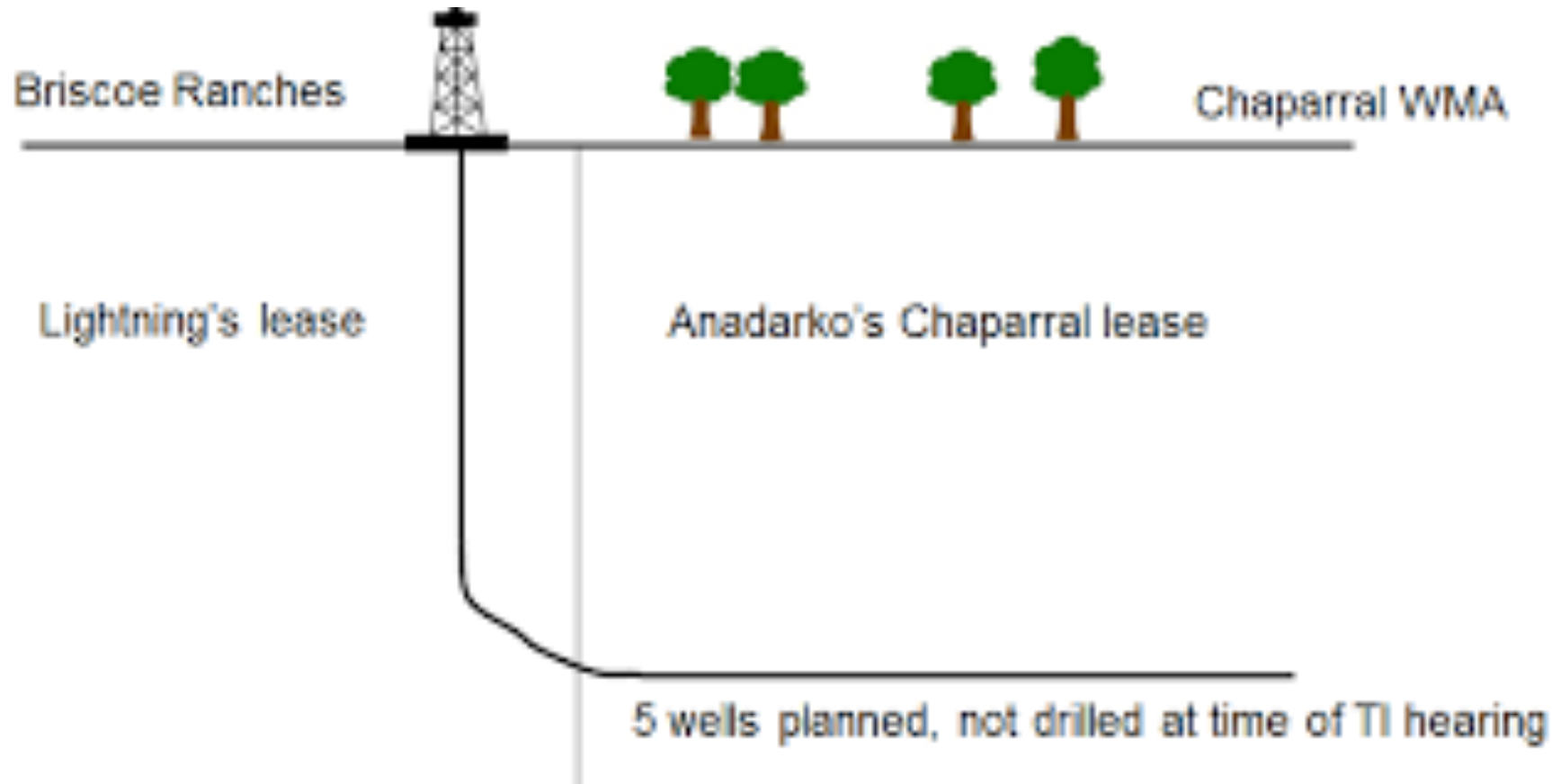
- If the defendant is an innocent trespasser, liability is limited to the value of the oil delivered at the surface, less reasonable costs necessarily incurred in producing such oil.
- Trespasser has the burden of proving good faith.
- Standard: Did the trespasser have an honest and reasonable belief in his title to the minerals?

Slant Hole Drilling



YOUR PARTNER IN CREATING MASSIVE, OUTSIZED VALUE

Lightning Oil Co. v. Anadarko E&P Onshore, LLC, 520 S.W.3d 39 (Tex. 2017).



Lightning Oil Co. v. Anadarko E&P Onshore, LLC, 520 S.W.3d 39 (Tex. 2017).

- Lightning sued Anadarko to prevent it from placing a well on the surface above Lightning's minerals that would drill through Lightning's minerals to reach Anadarko's minerals.
- Anadarko had permission from the surface owner of Briscoe Ranch.
- Trial and Appellate Courts ruled in favor of Anadarko
 - "...ownership of the hydrocarbons does not give the mineral owner ownership of the earth surrounding those substances."
 - "...the surface estate owner controls the earth beneath the surface estate."
 - BUT use of the surface estate is still subject to the accommodation doctrine.

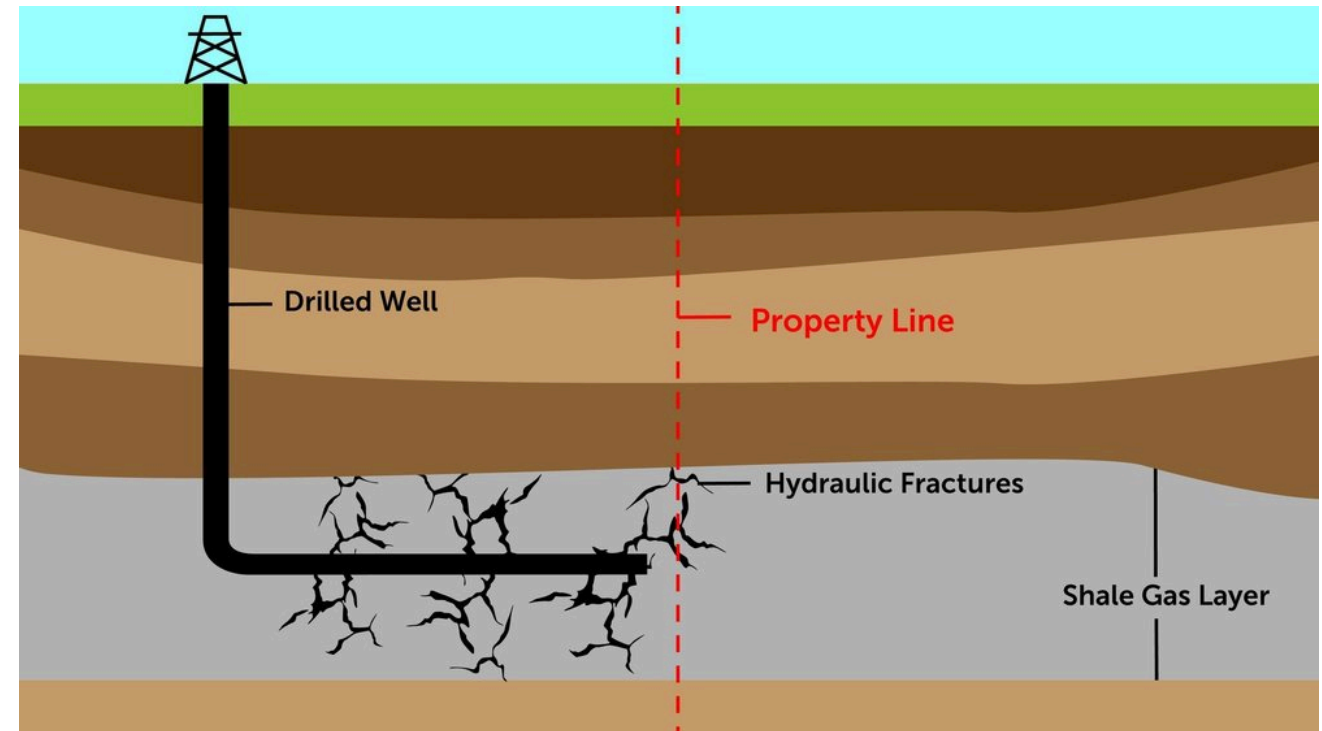
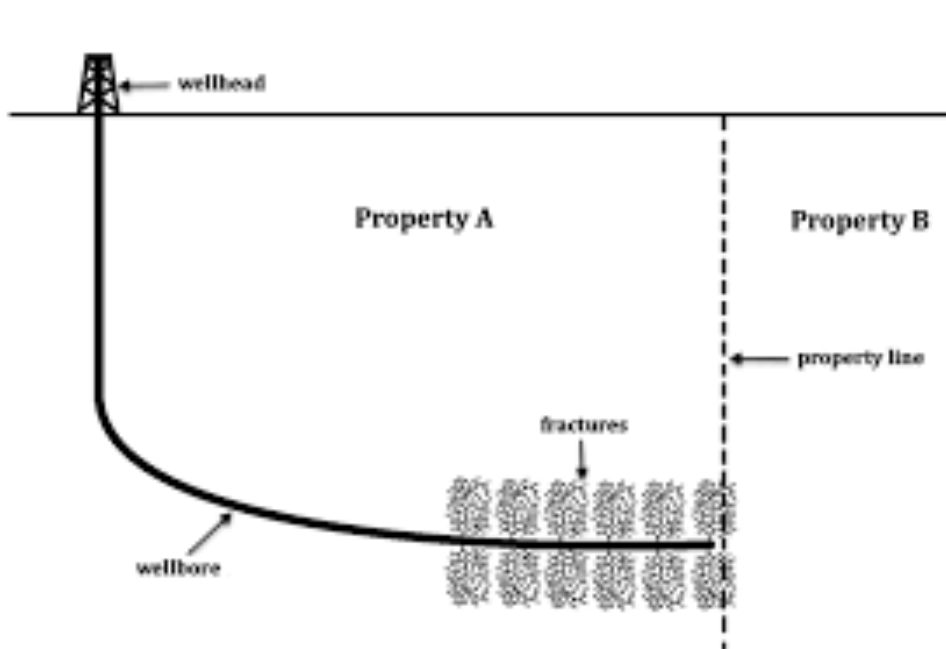
Lightning Oil Co. v. Anadarko E&P Onshore, LLC, 520 S.W.3d 39 (Tex. 2017).

- Texas Supreme Court

- Agreed that the surface owner owns and controls the mass of earth under the surface but that “those rights do not necessarily mean [the surface owner] is entitled to make physical intrusions into formations where minerals are located and remove some of those minerals...”
- “An unauthorized interference with the place where the minerals are located constitutes a trespass as to the mineral estate only if the interference infringes on the mineral lessee’s ability to exercise its rights.”
- Lightning only stood to lose minimal amounts of minerals whereas allowing Anadarko to drill horizontally would allow for the recovery of the most minerals with the fewest wells.
- Court concluded that there was no trespass.

Trespass from Fracking

- Issue: When the underground cracks created by fracking cross lease boundaries, will this support a cause of action for subsurface trespass?



Coastal Oil & Gas Corp. v. Garza Energy Trust **268 S.W.3d 1 (Tex. 2008).**

- Royalty owners sued for drainage damages due to the Lessee's drilling gas from a reservoir not encumbered by a royalty obligation.
 - Sought value of gas drained from adjacent land where their minerals were.
- Court held the rule of capture barred Plaintiffs (non-possessory royalty owners) from recovering damages based on subsurface trespass caused by defendants' use of hydraulic fracturing.
 - Rule of capture applies to fracking.
 - "The mineral owner is entitled not to the molecules actually residing below the surface, but to a fair chance to recover the oil and gas in or under his land..."
- Court did not directly address the issue of whether fracking extending beneath another's land was itself a trespass.

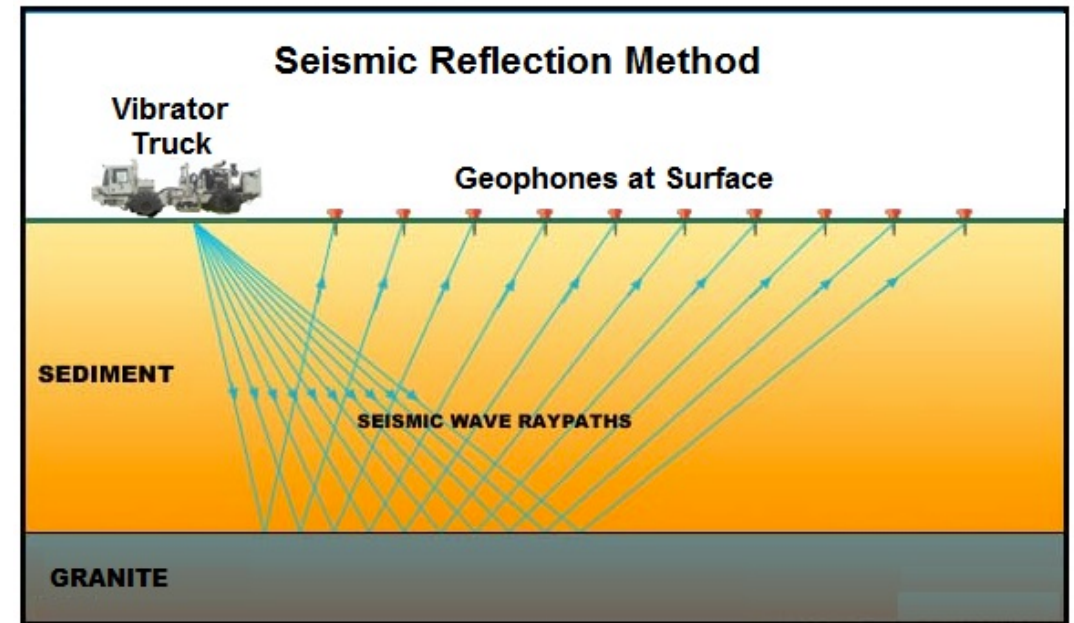
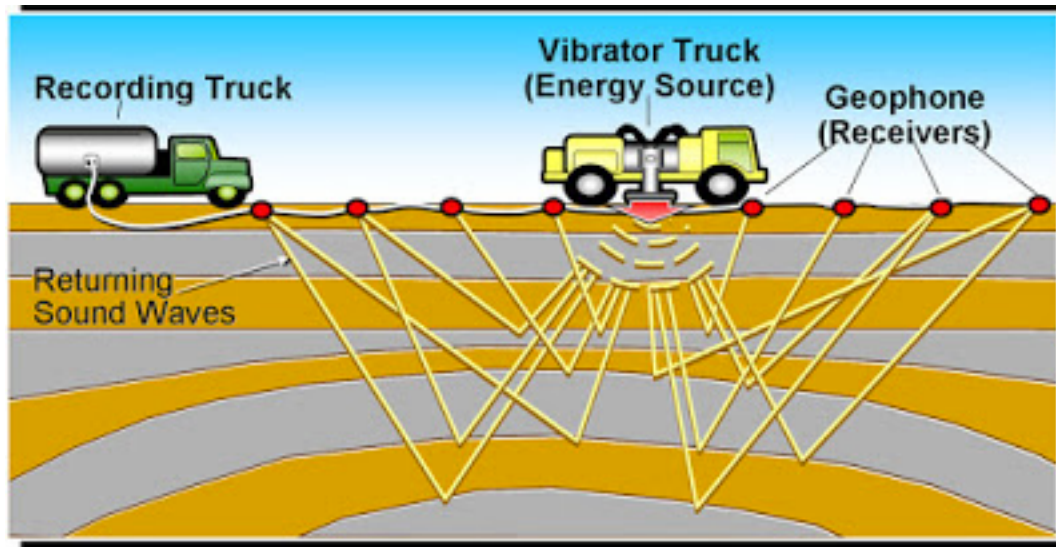
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Court's Reasoning:

1. Self-help is available to adjacent landowners
2. Allowing recovery for the value of drained oil or gas would undermine the Railroad Commission's authority to regulate oil and gas production.
3. Determining the value of drained oil and gas is something the courts are not equipped to handle.
4. The law should not be changed with respect to fracking because the industry does not call for it.

Geophysical Trespass (Seismic Survey)

- Issue: If the vibrations from the blast invade a tract in which there is no right to explore, is there a trespass?



Kennedy v. General Geophysical Co. **213 S.W.2d 707 (Tex. Civ. App.–Galveston 1948).**

- General shot seismic along a public road next to Kennedy's property. They did not enter Kennedy's land, but the charges were placed 10 to 15 feet from Kennedy's property line.
- Kennedy claimed the vibrations traveled through his property and sued for trespass.
- Court dismissed Kennedy's suit.
- In the absence of an actual physical entry or direct injury to the land, seismic vibrations on adjacent land will not support a cause of action for trespass.

Permission to Conduct Seismic Operations

The right to explore for oil and gas belongs to the mineral estate:

- Mineral Owner
- Lessee
- If the mineral ownership is shared by more than one person, consent of anyone who owns an undivided share of the minerals is sufficient.
- If the minerals have been severed, permission from the surface owner is not required, but it is a good idea to obtain permission to lessen exposure to liability for surface damages.

Other Legal Theories for Interference with Minerals

1. Slander of Title
2. Loss of Speculative Value
3. Wrongful Appropriation of Information

Slander of Title

- Ex: When a landowner loses the opportunity to get an oil and gas lease because of a false claim of title by a third party who does not have title to the minerals.
- Elements
 1. Publishing a false claim to title
 2. With malicious intent
 3. Which causes the plaintiff a specific pecuniary loss (e.g., lease)

Loss of Speculative Value

- Measure of damages is the loss of bonus under a lease which was frustrated by the tort.
- Damages are the same under Slander of Title, but the Plaintiff is not required to prove malice or loss of a specific deal.

Wrongful Appropriation of Information

- Usually brought when someone conducts a geophysical survey without permission or physical entry on the land.
- Damages are usually based on the lost value of information wrongfully obtained.

Economic Viability of Wells

- Good Well:
 - Trespass & Conversion → Ownership of the well less offset for drilling costs PLUS value of the oil & gas produced by trespasser less an offset for reasonable costs of production if in good faith
 - No offsets for bad faith trespassing
- Dry Hole or Bad Well:
 - Loss of speculative value → damages are the difference between the value of land for leasing before and after the tort
 - Slander of title → damages are the difference between an offer lost because of the tort and the value of the property after the tort.
 - Wrongful appropriation of information → damages may be based on the value of information wrongfully obtained to the trespasser.
- Because these are all tort claims, where bad faith or malice can be shown, punitive damages might also be granted.



QUESTIONS?

YOUR PARTNER IN CREATING MASSIVE, OUTSIZED VALUE